



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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March 14th, 2001

Minutes of the March 14th, 2001, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission Hearing Room, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Michael Carpenter, Hon. Virginia Constantine, Dr. Linda W. Cronkhite, and Hon. Harriet P. Henry (telephonically); Executive Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Diana True.

Chair Webster called the meeting to order at 10:01 a.m.

The Commission considered items on the published agenda as follows:

Agenda Item #4B: Thomas J. Wright

The Commission considered the matter of Mr. Wright's 6-Day Pre-General Campaign Finance Report that was due November 1st, 2000, and filed January 9th, 2001, 69 days late, with one (1) previous violation. A preliminary penalty determination of \$4,140.00 had been made based upon the application of the statutory formula. Mr. Wright personally appeared and cited previous mail problems; noted that he was not an active candidate, was not actively raising or spending campaign funds, had been working out of state much of the time, and had donated his surplus funds to other candidates; and acknowledged receipt of the required certified notice letter. After discussion of the particular facts, Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to assess a \$200.00 penalty for the late filing.

Agenda Item #4C: Honorable Edward R. Dugay

The Commission considered the 28-day late filing of Representative Dugay's 42-Day Post-General Campaign Finance Report that was due on December 19th, 2000, and filed on January 16th, 2001, with one (1) previous violation. A preliminary penalty determination of \$1,621.48 had been made based upon the application of the statutory formula. Representative Dugay appeared personally and addressed the Commission amplifying upon Mr. Wayne L. Crabtree's (accountant) explanatory letter of February 6th, 2001. The Commission considered the facts and circumstances presented by Representative Dugay with particular interest regarding the earliest opportunity the report could have been filed given the particular facts. Based upon that consideration, Mr. Carpenter moved, Ms. Constantine seconded, and Members voted 4-1 (Ms. Cronkhite opposed) to assess a penalty of \$1,389.74 for the late submission. Thereafter, Representative Dugay requested permission to pay the penalty in four (4) monthly installments.

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Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to authorize payment of the full penalty in four (4) monthly installments, with the first payment due on April 14th, 2001.

Agenda Item #5: Honorable E. Zachary Matthews Penalty Issue

Representative Matthews appeared personally and addressed the Commission concerning the failure to file his 42-day post-primary, 6-day pre-general, and 42-day post-general campaign finance reports. He noted that he had finally filed all required reports on March 13th, 2001. Based upon that information, Mr. Hain stated that he would make a preliminary determination of the penalty amount for each of the three (3) late filings and report those amounts at a subsequent meeting.

Agenda Item #2: Maine Democratic Party Complaint Against Maine Republican Party and Maine GOP Victory 2000/MRP (Tabled from January 2001 meeting)

The Commission considered a complaint alleging numerous violations by Maine GOP Victory 2000/MRP of the reporting requirements for independent expenditures contained in 21-A M.R.S.A. § 1019; a violation of the registration requirements for political action committees contained in 21-A M.R.S.A. § 1053; a violation of the disclosure requirements of 21-A M.R.S.A. § 1014(2); and, because independent expenditures were made but not reported in 15 contests involving Maine Clean Election Act candidates, violation of the Maine Clean Election Act on those 15 occasions. Mr. Hain reviewed the factual background surrounding each alleged violation, including a discussion of the applicable statutory provisions.

Attorney Ann R. Robinson appeared on behalf of Maine GOP Victory 2000/MRP and responded to the issues raised in the complaint, also directing the Commission's attention to the correspondence previously submitted, particularly emphasizing the Republican Party's belief and legal interpretation that the political communications had advocated issues, not expressly advocated the election or defeat of clearly identified candidates. Attorney Kurt W. Adams appeared on behalf of the Maine Democratic Party, offered the Commission his interpretation of the application of the statutory provisions to the facts, and suggested the result that he argued the Commission should reach based upon that interpretation. Chairman Webster raised the issue of when the obligations to produce the political communications were incurred based upon the dates of the apparent contracts included in the materials. Ms. Alison Smith from the Maine Citizen Leadership Fund addressed the Commission from the perspective of advocates of the Maine Clean Election Act.

Ms. Constantine noted her conclusions on what she suggested were the three (3) key issues: (1) The identification of GOP Victory 2000/MRP as a sub-account of the Maine Republican Party was adequate based upon the precedent of the Commission's previous actions on similar facts; (2) The failure to include the attribution statement required by statute amounted to a single violation rather than separate violations for each candidate named in the communication for which a \$200.00 penalty should be assessed; and (3) The full penalty should be assessed for the violation of the requirement to report independent expenditures, but the Commission should



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consider waiving that full amount based upon her belief that an honest error had been made, the fact that reasonable people could have misinterpreted the “express advocacy” reporting requirements as evidenced by the Commission’s 3-2 vote on the issue, and her conclusion that a waiver of the full assessment would be an appropriate remedy under these circumstances. Based upon those conclusions, Ms. Constantine moved, Judge Henry seconded, and Members voted unanimously to assess a penalty of \$200.00 for the violation of the attribution requirement, a penalty of \$2,887.25 for the violation of the failure to report independent expenditures as required, for a total penalty in the amount of \$3,087.25, but to waive all but the \$200.00 penalty for the reasons stated by Ms. Constantine.

Mr. Carpenter then noted for the record that the Commission may have been looking for ways to mitigate the penalties in this and other cases in the interest of educating participants because of the newness of the Maine Clean Election Act’s implementation, but that Members were running out of patience with organizations, including those affiliated with both political parties who employ organized volunteers, and consequently the Commission is getting to the point where the patience of Members is running out. He noted that while the Commission’s interest may be in the education process, the message to violators should be not to engage in similar conduct in the future.

Agenda Item #3A: Michael A. Vaughan

The Commission considered the 16-day late filing of Mr. Vaughan’s 6-Day Pre-General Campaign Finance Report that was due on November 1st, 2000, filed on November 17th, 2000, with one (1) previous violation. A preliminary penalty determination in the amount \$1,250.40 had been made. The Commission considered previous letters dated February 5th, 2001, from Mr. Vaughan and February 13th, 2001, from Ms. Georgia G. Chomas, Mr. Vaughan’s Treasurer, regarding mitigating circumstances. Ms. Chomas had requested the tabling of the matter to enable her to attend, but had informed the Commission staff that she would not be able to attend this meeting. Mr. Vaughan requested the Commission to consider the matter without further delay due to the impact of such delay on his employment. The Commission noted the date that Mr. Vaughan had delivered his report to Ms. Chomas to be signed and sent to the Commission and determined that the delay beyond that date should be attributable to Ms. Chomas, as she acknowledged in her letter. Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to assess a penalty in the amount of \$468.90, but to require that it be assessed equally against and paid by both the candidate and treasurer in the amounts of \$234.45 each.

Agenda Item #1: February Meeting Minutes

Mr. Carpenter moved, Ms. Constantine seconded, and the Commission voted unanimously to accept the minutes of the February 14th, 2001, meeting as presented.

Agenda Item #4A: Honorable Joseph C. Perry

The Commission considered the 1-day late filing of Representative Perry’s 6-Day Pre-General Campaign Finance Report that was due on November 1st, 2000, filed on November 2nd, 2000,

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with one (1) previous violation, and his request that he be permitted to pay the preliminary determination penalty amount of \$143.60 on a payment schedule of \$30 every two weeks beginning March 8th until the penalty is paid in full. Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to assess the full penalty of \$143.60 and to deny the request to pay the full amount in installments based upon the size of the penalty.

Agenda Item #5: Referrals of Unpaid Penalties and Non-Filings of Candidate Campaign Finance Reports

The Commission reviewed the tables provided to reflect the status of candidates who had not filed required reports for the 2000 elections and those who had unpaid penalties. The Commission had previously referred to the Attorney General's Office for appropriate action some of those candidates as noted. Commission Counsel Gardiner briefed Members regarding the status of those cases that previously had been referred for action, including those of two (2) pending Maine Clean Election Act violations. Mr. Hain was directed to refer all remaining failures to file (except that of Representative Matthews as a result of the action previously taken) and penalty collection cases to the Attorney General for appropriate action.

Agenda Item #6A: Eugene J. McLaughlin, Jr. Maine Clean Election Act Violation

The Commission considered a possible violation of 21-A M.R.S.A. § 1125(6) by making expenditures in the amount of \$839.21 (\$129.10 for payment of late report filing penalty, \$25.00 for return check fee due to account overdraft, and \$685.11 in unexplained expenditures) in excess of MCEA distribution. Mr. McLaughlin spent in excess of the MCEA authorized amount because of a mistake in determining his account balance, relying on his bank account records instead of his checkbook balance. When the error was discovered due to an "insufficient funds" notice, Mr. McLaughlin immediately took steps to identify the problem and paid the bank deficiency from his personal funds. The Maine Clean Election Fund had been fully reimbursed. Ms. Constantine moved, Ms. Cronkhite seconded, and Members voted unanimously to note a violation, but to assess no penalty based upon Mr. McLaughlin's explanation and actions.

Agenda Item #7: Sumner A. Lymburner Complaint

By letter dated February 10th, 2001, Mr. Lymburner requested to have the dollar value of biased newspaper articles added to the reported funding levels of candidates in an attempt to drive elections toward honesty in funding and advertising dollars. The Commission concluded that no governmental agency has authority to remedy what Mr. Lymburner referred to as "the severe bias from the media," and that the Commission lacks jurisdiction over any particular statutory provision that would permit Members to address the other concerns he raised in his letter. The Commission noted that, in the event the Legislature enacts a reporting requirement that would accomplish Mr. Lymburner's objectives, the Commission then would take appropriate action. The Commission noted, however, that the United States Supreme Court has interpreted the First Amendment of the Constitution as limiting the ability of Legislatures to regulate political speech. That limitation may preclude the Legislature from requiring the reporting that would accomplish Mr. Lymburner's objective.



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Agenda Item #8: Comments on Legislation

The Commission noted the following bills that affect the Commission: LD 763 (An Act to Refine the Maine Clean Election Act); LD 835 (An Act to Eliminate Funding for Primary Elections Under the Maine Clean Election Act); LD 1055 (An Act to Regulate Push Polling); and LD 1101 (An Act to Bring Fairness to the Maine Clean Elections Act).

Agenda Item #9: Maine Clean Election Act Gubernatorial Distribution

Ms. Constantine moved, Mr. Carpenter seconded, and Members voted unanimously to adopt the distribution amounts proposed for the 2002 gubernatorial elections based upon application of the Maine Clean Election Act formula to expenditures reported for the 1994 and 1998 gubernatorial elections.

Agenda Item #10: Informational Items

The Commission noted the informational items included in the agenda without action.

Agenda Item #11: Executive Session

None was required.

Other

Mr. Hain presented a letter from Ms. Nancy Oden, Treasurer of Citizens for a Livable Environment in Alliance with Nature (CLEAN) in Maine Political Action Committee, requesting that penalties assessed against that committee for late filing of reports resulting from \$105.00 in personal contributions to the committee be waived based upon the numerous mitigating circumstances cited in her letter. Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to waive the penalties contingent upon Ms. Oden not violating any other statutes under the Commission's jurisdiction in the future. In the event of any future violation, the full amount of this penalty (\$530.25) would be assessed.

There being no further business, on motion and unanimous vote, the Commission adjourned at 12:07 p.m.

Respectfully submitted,

William C. Hain, III
Executive Director